UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

KEOSHA HORNE, et al., Plaintiffs, v. SMITHFIELD PACKING COMPANY, INC., Defendant.	)	Civil Action No. 5:09-CV-00042-H
ANGELINA MITCHELL, et al., Plaintiffs, v. SMITHFIELD PACKING COMPANY, INC., Defendant.	)	Civil Action No. 4:08-CV-00182-H
JAMES HARRIS, et al., Plaintiffs, v. SMITHFIELD PACKING COMPANY, INC., Defendant.	)	Civil Action No. 4:09-CV-0041-H

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT

I. INTRODUCTION.

Pursuant to Rules 7 and 23(e) of the Federal Rules of Civil Procedure, Keosha Horne, on behalf of herself and all other similarly situated individuals (Plaintiffs in the civil action originally filed on February 2, 2009, in the United States District Court, Eastern District of North

Carolina, styled *Keosha Horne and Nettie Tyson, on behalf of themselves and all other similarly situated individuals v. Smithfield Packing Co., Inc.*, C.A. No. 5:09-cv-00042-H (the "*Horne* Action")); Angelina Mitchell, on behalf of herself and all other similarly situated individuals (Plaintiffs in the civil action filed on October 24, 2008, in the United States District Court, Eastern District of North Carolina, styled *Angelina Mitchell, Marlowe Jones, and Jerraine Cannon, on behalf of themselves and all other similarly situated individuals v. Smithfield Packing Co., Inc.*, C.A. No. 4:08-cv-00182-H (the "*Mitchell* Action")); and James Harris, on behalf of himself and all other similarly situated individuals (Plaintiffs in the civil action filed on March 19, 2009, in the United States District Court, Eastern District of North Carolina, styled *James Harris and Trevonya Williams, on behalf of themselves and all other similarly situated individuals v. Smithfield Packing Co., Inc.*, C.A. No. 4:00-cv-00041-H (the "*Harris* Action")), and Smithfield Packing Co., Inc. (Defendant in the above-referenced actions), by and through their undersigned counsel, file this Memorandum of Law in Support of their Joint Motion for Final Approval of Settlement and Dismissal with Prejudice. Plaintiffs and Defendants incorporate by reference their Joint Motion for Preliminary Approval of Collective Action Settlement (hereinafter "Motion for Preliminary Approval") (DE No. 222 in *Horne* Action, DE No. 191 in *Mitchell* Action, DE No. 163 in *Harris* Action.)

As a part of the request for final approval of settlement, Plaintiffs also seek Court approval of agreed-upon service awards for certain Plaintiffs who assisted class counsel. The terms and conditions of the settlement are set forth in the Settlement Agreement dated December 9, 2013 ("Settlement"), which was previously filed with the Court as an attachment to the Motion for Preliminary Approval. The Court preliminarily approved the Settlement Agreement as memorialized in the Court's January 14, 2014 Order. The Settlement resolves the Class Members' claims under Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, and the

North Carolina Wage and Hour Act ("NCWHA"). The issue before the Court is a straight-forward one: namely, whether the Settlement is fair, reasonable, and adequate and, if so, should it be approved by the Court pursuant to Rule 23(e). The parties believe the Settlement is fair, reasonable, and adequate and should be finally approved.

The Settlement is a notable achievement after more than four years of protracted, arduous, and complex litigation, followed by extensive arms-length settlement negotiations. Class counsel secured a Settlement that made significant compensation, more than $2,000,000, available to over 5,000 qualifying Class Members. But for Plaintiffs and class counsel prosecuting this litigation and negotiating this Settlement, the Class likely would have recovered nothing.

The Settlement was reached after class counsel: (a) conducted an extensive investigation into the underlying facts as set forth in the Complaints; (b) thoroughly researched the law applicable to the Class Members' claims and the Defendant's defenses; (c) conducted extensive class and merits discovery, including taking 30(b)(6) depositions and defending Plaintiffs' depositions; (d) retained expert witnesses who prepared expert reports on liability and damages, defended their depositions and deposed Defendant's expert; (e) briefed numerous motions on the substantive and procedural law; (f) concluded merits discovery regarding Defendant's claims and defenses; (g) reviewed and analyzed hundreds of pages of documents and voluminous electronic data produced by Defendant; (h) successfully certified the Class as both a collective and class action over Defendant's strong opposition; (i) obtained favorable decisions from the Court on the applicability of the FLSA and state law to the class; (j) participated in a mediation; (k) consulted with expert witnesses to fully evaluate the strength of Plaintiffs' claims and damages; and (l) began briefing multiple summary judgment issues.

The Parties ultimately entered into settlement negotiations and reached a settlement that was preliminarily found to be fair, reasonable and adequate and approved by the Court on January 14, 2014. Notice of the Settlement was sent by the Claims Administrator beginning February 18, 2014. The Court set the Final Approval Hearing for May 15, 2014.

Plaintiffs faced significant risks in obtaining a more favorable outcome with continued litigation. Plaintiffs' burden of proof would have been to establish that Defendant failed to pay over 5,000 workers, at three plants, one of which was closed, who worked in different departments, wearing different configurations of personal protective equipment, for time spent donning and doffing, and then prove the amount of time individuals spent after their first donning of protective clothing and equipment, until their last doffing of protective clothing and equipment after their pay stopped. Defendant denied liability and had also retroactively paid some class members some amount for donning and doffing. Plaintiffs' ability to prove the amount of time spent donning and doffing under these complex circumstances in a way calculable by a jury would have been a significant issue had there been a trial. Defendant would have argued that the time was *de minimis,* and/or that Plaintiffs could take some of their equipment and clothing home at some of the plants and/or that Plaintiffs did not have or could not prove uncompensated time, all of which, if accepted by the Court at summary judgment, by the jury at trial, or by an appellate court upon review, would severely reduce or eliminate damages. Further, the case would have taken many more years to resolve.

During the pendency of this lawsuit, Plaintiffs' case was affected by the Fourth Circuit's decision in *Perez v. Mountaire Farms, Inc.*, 650 F.3d 350 (4th Cir. 2011), which appellate ruling was a factor class counsel considered in this Settlement, although the recovery here substantially exceeded the recovery in *Perez*. In short, Plaintiffs faced numerous obstacles in proving both liability and damages. There was no certainty, given Defendant's asserted defenses, that the

Class would prevail on either liability or damages at trial. Moreover, because of the age of the case and the limitation period preceding the filing, the facts were even more complex, as practices at the plant continued to evolve and change over the years.

Class counsel is experienced in prosecuting collective and class actions, and has concluded that the Settlement is a fair, reasonable and adequate result under the circumstances and is in the best interest of the entire Class. This conclusion is based on all the circumstances present here, a complete analysis of all available evidence, the substantial risks, expense and uncertainties in continuing the litigation, the relative strengths and weaknesses of the claims and defenses asserted, the legal and factual issues presented, and class counsel's past experience in litigating complex legal actions.

Members of the Class appear to overwhelmingly agree with class counsel's conclusion. The parties have completed the notice and claims process described in the Settlement Agreement and the Court's January 14, 2014 Order. Pursuant to the Court's Preliminary Approval Order, a Notice of Proposed Settlement of Class Action (the "Notice") was mailed to 5,162 Class Members. The Notice apprised Class Members of their rights to return a claim form and participate in the settlement and procedures for opting-out of or objecting to the Settlement. The time to file objections expired on April 19, 2014. To date, no Class Member has objected to the Settlement, and only 12 Class Members elected to opt-out of the lawsuit. As of this date, the Claims Administrator received 1,781 claim forms. The overwhelming acceptance of the Settlement by the Class fully supports a finding that the Settlement and allocation of Settlement proceeds are fair, reasonable, and adequate and should be approved by the Court.

Accordingly, in accordance with Paragraph 5 of the Court's January 14, 2014 Order, the parties now request that the Court enter a final judgment approving the settlement and dismissing these actions on the merits and with prejudice and permanently barring all members of the

settlement class from prosecuting against Defendant any of their present or former subsidiaries, divisions, parent companies, holding companies, stockholders, officers, directors, employees, agents, servants, representatives, attorneys, insurers, affiliates, successors and assigns, and any individual or class claims that are released by the Settlement Agreement approved by the Court on January 14, 2014.

II. THE STANDARDS FOR APPROVAL OF CLASS ACTION SETTLEMENTS.

Rule 23(e) of the Federal Rules of Civil Procedure provides that class action settlement must have court approval. Judicial approval of class action settlements is intended to ensure that the rights of absent class members are adequately protected. *See Amchem Prods. v. Windsor*, 521 U.S. 591, 621 (1997). As the Fourth Circuit has noted, "[t]he primary concern addressed by Rule 23(e) is the protection of class members whose rights may not have been given adequate consideration during the settlement negotiations." *In re Jiffy Lube Sec. Litig*., 927 F.2d 155, 158 (4th Cir. 1991). In approving a proposed settlement of a class action in this Circuit, a court should find that the proposed settlement is both fair and adequate. *See Id.* at 158-59; *Scardelletti v. Debarr*, No. 99-2619, 43 Fed. Appx. 525, 528 (4th Cir. Aug. 8, 2002). "Rule 23(e) require[s] the court to consider the fairness and adequacy of the settlement primarily with regard to the interests of the plaintiff class members." *Jiffy Lube,* 927 F.2d at 160.

The fairness inquiry focuses on whether the settlement was reached as a result of good-faith bargaining at arm's length without collusion. *See Id.* at 159. Several factors which courts consider in determining fairness are: (i) the posture of the case at the time settlement was proposed; (ii) the extent of discovery that had been conducted; (iii) the circumstances surrounding the settlement negotiations; and (iv) the experience of counsel. *See Id*.; *Flinn v. FMC Corp.*, 528 F.2d 1169, 1173 (4th Cir. 1975); *Jiffy Lube*, 927 F.2d at 158-159; *In re Red Hat, Inc. Sec. Litig.*, 5:04-CV-473-BR, 2010 WL 2710517, at *2 (E.D.N.C. 2010).

The adequacy inquiry considers the substantive factors of the settlement. These factors are: (i) the relative strength of plaintiffs' case on the merits; (ii) the existence of any difficulties of proof or strong defenses the plaintiffs are likely to encounter if the case goes to trial; (iii) the anticipated duration and expense of additional litigation; (iv) defendant's solvency and the likelihood of recovery on litigated judgment; and (v) the degree of opposition to the settlement. *See Jiffy Lube*, 927 F.2d at 159; *Flinn*, 528 F.2d at 1173-74.

In assessing the fairness and adequacy of a settlement, courts give a "strong initial presumption that the compromise is fair and reasonable." *S.C. Nat'l Bank v. Stone*, 139 F.R.D. 335, 339 (D.S.C. 1991) (citation omitted). Therefore, it is proper for a court to limit its proceedings to whatever is necessary to reach an informed decision. *Flinn*, 528 F.2d at 1173. The court should not "turn the settlement hearing 'into a trial or a rehearsal of the trial' nor need it 'reach any dispositive conclusions on the admittedly unsettled legal issues' in the case." *Id.* at 1172-73 (citations omitted). Courts routinely encourage parties to attempt to resolve disputed claims by reaching a settlement. Courts have noted that settlements "will be upheld whenever possible because they are a means of amicably resolving doubts and preventing lawsuits." *Miller v. Republic Nat'l Life Ins. Co.*, 559 Fed 426, 428 (5th Cir. 1977), quoting *Pearson v. Ecological Science Corp.*, 522 F.2d 171, 176 (5th Cir. 1975). Given the particularly complex nature of class actions, the public interest in favor of settlement weighs decidedly in favor of compromised settlements. When a court is asked to determine if a proposed settlement is appropriate, the court is not required to substitute its own judgment for that of the parties or to decide the merits of the case itself. *Maher v. Zapata Corp*., 714 F.2d 436, 455 (5th Cir. 1983). In fact, when a court is reviewing a proposed settlement, the court may give considerable weight to the opinion of experienced counsel who believes that settlement is in the best interest of the class. *Pettway v. Am. Cast Iron Pipe Co.*, 576 F.2d 1157, 1216 (5th Cir. 1978).

As discussed below, application of these standards establishes that this settlement is both fair and reasonable and should be approved.

III. THE PROPOSED SETTLEMENT MEETS THE FOURTH CIRCUIT STANDARDS FOR APPROVAL.

A. The Proposed Settlement Is Fair.

The Settlement before the Court meets each of the prongs of the fairness standard.

1. The Posture Of The Case At The Time Settlement Was Proposed And The Extent Of Discovery.

There is no minimum amount of discovery that must be undertaken to satisfy this factor. *See Jiffy Lube*, 927 F.2d at 159. Indeed, courts are instructed to give consideration to the extent of discovery conducted to ensure that a plaintiff had access to sufficient material to evaluate his or her case on an informed basis and to assess the adequacy of the settlement in light of the strengths and weaknesses of his or her position. *Id*. The named Plaintiffs and defense witnesses from each plant were deposed. Each side retained expert witnesses, and expert reports were prepared that analyzed the amount of uncompensated time and the damages associated with that time. Plaintiffs conducted a complete and extensive factual investigation into the underlying facts, including all the allegations set forth in the Complaints and Answers; exchanged expert discovery; visited the facilities on multiple occasions and planned and performed industrial engineering studies; extensively analyzed the wage and hour data produced by Defendant; and consulted with various experts to advise Plaintiffs' counsel and to testify at trial in support of Plaintiffs' claims if necessary.

During the mediation process, the Parties participated in settlement negotiations where the strengths and weaknesses of the claims and defenses were debated and multiple offers and demands were made. Plaintiffs also successfully certified the Class over Defendant's strong opposition. Thus, the litigation had reached a stage whereby Plaintiffs and class counsel had

sufficient information to fully evaluate the merits of the claims asserted, as well as the potential obstacles to success and the propriety of settlement. *See Strang v. JHM Mortg. Sec. Ltd. P'ship*, 890 F. Supp. 499, 501 (E.D. Va. 1995) (finding settlement was "fair" where no formal discovery took place but plaintiffs conducted sufficient informal discovery and investigation to fairly evaluate merits of defendant's positions during settlement negotiations). Having sufficient information to properly evaluate the case and the propriety of settlement, Plaintiffs and their counsel have managed to settle the litigation on terms highly favorable to the Class.

2. The Circumstances Surrounding Settlement Negotiations.

The settlement negotiations were hard-fought and took place at arm's length. Class counsel and defense counsel participated in a mediation session during which class counsel made it clear that, while they were prepared to fairly assess the strengths and weaknesses of the claims asserted, they would continue to litigate rather than settle for less than fair value. After the Parties reached an impasse at mediation, the parties continued negotiating and ultimately reached a settlement.

As demonstrated herein, the Settlement was entered into in good faith and at arm's length; accordingly, the Settlement enjoys a presumption that it was reached without collusion and is fair, reasonable and adequate. *See Strang*, 890 F. Supp. At 501-02 ("[T]he Court is persuaded that plaintiffs' counsel, with their wealth of experience and knowledge in the securities-class action area, engaged in sufficiently extended and detailed settlement negotiations to secure a favorable settlement for the class.").

3. The Experience Of Counsel.

The opinion of experienced counsel familiar with the facts of the case should be given great weight in evaluating a proposed settlement. *See U.S. v. N.C.*, 180 F.3d 574, 581 (4th Cir. 1999). Indeed, where there is "no indication of any collusion, it is therefore appropriate for the court to give significant weight to the judgment of class counsel that the proposed settlement is

in the interest of their clients and the class as a whole." *S.C. Nat 7 Bank*, 139 F.R.D. at 339; *see also Flinn*, 528 F.2d at 1173.

This case has been litigated and settled by experienced and competent class counsel. Class counsel is known for its experience and success in complex class action litigation and has many years of experience in litigating class actions. Forest Horne, shareholder at Martin & Jones since 2001 and lead counsel for the Class in this case, has been practicing law in the State of North Carolina for 25 years. He has worked on class actions for 11 years. Hoyt Tessener, a shareholder at Martin & Jones, has been practicing law for 26 years and handling class actions for 20 years. Christopher Olson, a shareholder at Martin & Jones, has been practicing law for 20 years and handling class actions for 11 years. Based on their collective experience and expertise, class counsel have determined that the Settlement is in the Class's best interest after weighing the substantial benefits of the Settlement against the numerous obstacles to a potentially better recovery after continued litigation. Each of the "fairness" factors in *Jiffy Lube* has been satisfied and final approval of the Settlement is warranted.

B. The Proposed Settlement Is Adequate.

1. The Strength Of Named Plaintiffs' Case And The Difficulties Of Proof And Potential Defenses Named Plaintiffs Were Likely To Encounter At Trial Support Approval Of The Settlement.

a) Risks In Establishing Liability And Damages.

Even if Plaintiffs prevailed and obtained a substantial judgment after trial, there is little doubt that Defendant would have appealed. The appeals process would have likely spanned several years, during which the Class would have received no distribution on any damage award. Furthermore, an appeal of any verdict would carry the risk of reversal, in which case the Class would receive no recovery after having prevailed on the claims at trial.

b) Certainty Of A Substantial Recovery.

Although class counsel believes that the case is meritorious, their experience has taught them how the above-mentioned factors make the outcome of a trial uncertain. Courts have long recognized that FLSA litigation around donning and doffing is notably difficult and extremely uncertain. *See Lopez v. Tyson Foods, Inc.*, 8:06 Civ. 00459-LES-TDT, DE 372 (D. Neb. filed May 26, 2011) (defense verdict); *see also Salazar v. Butterball, LLC*, No. 08 Civ. 02071-MSK-CBS, 2010 WL 865353 (D. Colo. March 15, 2010) (granting summary judgment to Butterball); *see Solis v. Tyson Foods, Inc.*, No. 2:02 Civ. 1174-VEH, DE 514 (N.D. Ala. filed Nov. 4, 2009) (awarding low damages in case brought by the U.S. DOL). Even if Plaintiffs were to prevail at trial, risks to the Class remain. *See Perez v. Mountaire Farms, Inc.*, 650 F.3d 350, 378 (4th Cir. 2011) (denying liquidated damages); *Lopez v. Tyson Foods, Inc.*, 8:06 Civ. 459, DE 372 (D. Neb. May 26, 2011) (defense verdict). Litigation would entail a risk of low damages or even a Defense verdict.

2. The Complexity, Length, And Expense Of Further Litigation Support Approval Of The Settlement.

There were significant issues still to be decided at the time of settlement. Plaintiffs' counsel were working on motions for summary judgment on two issues: whether donning and doffing PPE is integral and indispensable, and whether Smithfield's *de minimis* defense was warranted. Defendant also informed class counsel it was preparing a motion for summary judgment on the "*de minimis*" defense and various other dispositive motions. The numerous arguments that Defendant was preparing to address in summary judgment motions are set forth in Sections IV and V of the Motion for Preliminary Approval.

The issues that would have been determined at trial are equally complex, such as proving that Defendant failed to pay workers for all time spent donning and doffing personal protective equipment after the first principal activity, and then proving how much time was uncompensated. The numerous disputed issues and the numerous legal obstacles facing

Plaintiffs are discussed in great detail in Sections IV and V of the Motion for Preliminary Approval. Thus, there is no doubt that the Settlement will spare the litigants the significant delay, risk, and expense of continued litigation.

Many hours of the District Court's time and resources have also been spared. Moreover, even if the Class could recover a larger judgment after a trial, the additional delay through trial, post-trial motions, and the appellate process, could deny the Class any recovery for years, which would further reduce the value of any recovery. The Settlement at this juncture results in a certain and substantial tangible recovery without the considerable risk, expense, delay of additional motions, trial, and post-trial litigation. *See Reynolds v. Beneficial Nat 7 Bank*, 288 F.3d 277, 284 (7th Cir. 2002) ("To most people, a dollar today is worth a great deal more than a dollar ten years from now."). A prolonged period of additional pretrial proceedings and a lengthy and uncertain trial would not serve the interest of the Class in light of the substantial monetary benefits provided for by the Settlement when weighed against the likelihood of a larger recovery years down the road after continued litigation. Thus, the prospect of continued, protracted, expensive, and uncertain litigation strongly supports approval of the Settlement.

3. Defendant's Solvency And The Likelihood Of Recovery On A Litigated Judgment Support Settlement.

Class counsel has presumed Defendant's solvency and has given no consideration to solvency as a discount. However, as recent corporate debacles demonstrate, in the current corporate and economic environment, no one can predict in these unstable times whether a large judgment, entered several years from now, would be collectable. As a result, even if the Plaintiffs were successful and obtained a substantial judgment after trial and the exhaustion of appeals, there was always a continuing risk to litigation. Nevertheless, Plaintiffs did not consider this factor in reaching the Settlement and do not rely upon this consideration in this motion.

4. The Degree Of Opposition To The Settlement.

The attitude of Class Members, as either specifically expressed or as expressed by failure to object after notice of the Settlement, is a factor to be considered by the Court. *Flinn*, 528 F.2d at 1173. In this case, the Claims Administrator sent Notices of Settlement to over 5,000 potential Class Members. The time period for objecting to the Settlement has expired. As of the date of this filing, class counsel have received no objections to the Settlement and no objections to class counsel's request for an award of attorneys' fees and expenses. Just twelve Class Members opted-out of the Settlement. The overwhelming approval of the Settlement by the Class Members is an important factor in evaluating the fairness, reasonableness, and adequacy of the Settlement and supports approval by the Court. See Declaration of Claims Administrator's Project Manager Amanda Myette for statistics showing overwhelming support for the Settlement. (Myette Dec.)

IV. SERVICE PAYMENTS SHOULD BE AWARDED TO THE NAMED PLAINTIFFS AND CERTAIN DEPOSED PLAINTIFFS

This Settlement is a fair result for the qualifying Class Members. Given the presence of skilled counsel for all parties, the complexity of the facts and law at issue, the further substantial expenses if this litigation were to continue, the risks attendant to continued litigation, the sizable present benefit of the Settlement, and the arm's-length negotiations leading to settlement, the Court should find that the Settlement is fair and adequate. Class counsel further requests that the Court approve service awards for certain Plaintiffs. The service payments sought are a recognized way to compensate class representatives and other Plaintiffs for the services they provided to the Class. Smithfield has previously agreed to pay Court approved service awards of $5,000 each to each named Plaintiff who returned a signed Release, and all claim forms have been signed and tendered to Smithfield.

Service payments are the norm in class actions. *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) ("[C]ourts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.") (citation omitted); *see also In re Red Hat, Inc. Sec. Litig*., No. 5:04-CV-473-BR, Doc. 231, p.3 (E.D.N.C. filed Dec. 10, 2010) (awarding lead plaintiff $15,000); *In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 282, 284 (3d Cir. 2009) ($10,000 service payment); *Rowles v. Chase Home Finance, LLC*, No. 9:10-cv-01756-MBS, 2012 WL 80570 (D.S.C. Jan. 10, 2012); *In re Wachovia Corp. ERISA Litig*., No. 3:09-CV-262, 2011 WL 5037183, at *7 (W.D.N.C. Oct. 24, 2011); *In re Tyson Foods, Inc.*, No. RDB-08-1982, 2010 WL 1924012, at *4 (D. Md. May 11, 2010.)

The purpose of a service payment is to "encourage socially beneficial litigation by compensating named plaintiffs [and active class members] for their expenses on travel and other incidental costs, as well as their personal time spent advancing the litigation on behalf of the class and for any personal risk they undertook." *Rowles*, 2012 WL 80570, at *4 (citation omitted); *see also In re Wachovia*, 2011 WL 5037183, at *7. Such services payments are intended to compensate for "participating in telephone conversations, collecting documents, answering interrogatories, preparing for and attending depositions, [and] being willing to testify at trial." *Dewey v. Volkswagen of Am.*, 728 F.Supp.2d 546, 610 (D.N.J. 2010). The risks service payments address include "the risk to the class representative in commencing suit, both financial and otherwise [and] the notoriety and personal difficulties encountered by the class representative." *Stuart v. Radioshack Corp.*, No. C-07-4499 EMS, 2010 WL 3155645, at *7 (N.D. Cal. Aug. 9, 2010). In the employment context in particular, a named plaintiff takes a significant risk to his or her reputation in the industry. *Velez v. Majik Cleaning Service, Inc.*, No. 03 Civ. 8698 (SAS)(KNF), 2007 WL 7232783, at *7 (S.D.N.Y. June 25, 2007).

When considering the service payment, the Court should consider "the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation." *In re Tyson*, 2010 WL 1924012, at *4. Here, the Plaintiffs for whom service awards are sought performed substantial services to and bore substantial risks for the class. Some Plaintiffs' service began with the filing of the lawsuit and others with consideration of settlement through hearings on preliminary approval of the Settlement. The Plaintiffs for whom service awards are sought represented the class by either participating in discovery, offering testimony, submitting declarations in support of various filings made by class counsel, working with class counsel in developing the case, and ultimately carefully considering and supporting a successful settlement for the Class. (*See* Attachment A, Horne Dec. ¶ 31.) Although trial was unnecessary, the Class representatives were prepared to testify at trial. (Horne Dec. ¶ 32.) The Plaintiffs for whom service awards are sought also assumed substantial risks in bringing the litigation. These Plaintiffs also risked being held responsible for litigation costs should they not have been successful; another risk they bore themselves. Similarly, the deposed Plaintiffs helped to prosecute the case by attending depositions. (Horne Dec. ¶ 33.) Thus, the Plaintiffs and deposed Class Members should be compensated for their services and the risks they bore in bringing these actions. *Hoffman v. First Student, Inc.*, No. WDQ-06-1882, 2010 WL 1176641, at *3 (D. Md. Mar. 23, 2010); *In re Tyson*, 2010 WL 1924012, at *4.

Smithfield does not object to making service payments that do not exceed $36,000.00, which payment is separate and apart from the Class settlement fund. The payments class counsel seeks here are well within the range of those approved by the Courts in this District, other jurisdictions, and in other wage and hour cases. Numerous courts have awarded service payments equal to or higher than those proposed here. *See, e.g., Rowles*, 2012 WL 80570, at *4

(awarding $25,000 and $10,000 incentive payments to class representatives); *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756 (S.D. W. Va. 2009) (awarding class representative $15,000 for initiating litigation); In re Ins. Brokerage, 579 F.3d at 282, 284 (affirming $10,000 service payment); *Bredbenner v. Liberty Travel, Inc.*, Nos. 09-905 (MF), 09-1248(MF), 09-4587(MF), 2011 WL 1344745, 22-24 (D.N.J. April 8, 2011) (granting service payments of $10,000 each to eight representatives in wage and hour litigation); *In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06-3202, 2009 WL 2137224, at *12 (E.D. Pa. July 16, 2009) ($20,000 service payment in FLSA and Pennsylvania wage and hour case); *Mentor v. Imperial Parking Sys., Inc.*, 05-Civ. 7993, 2010 WL 5129068, at *1 (S.D.N.Y. Dec. 15, 2010) (awarding a $40,00 and $15,000 service payment in New York Labor Law class action and FLSA case); *Groves v. Roy G. Hildreth and Son, Inc.*, No. 2:08 Civ. 00820, at *12 (E.D. Cal. July 21, 2010) ($10,000 enhancement payment for class action under California law and the FLSA). And the service payments to the deposed plaintiffs are also less than payments awarded in other cases. *See, e.g.*, *In re Tyson*, 2010 WL 1924012, at *4 (awarding $2,500 to class members that were deposed in wage and hour case); *In re Wells Fargo Loan Processor Overtime Pay Litig.*, MDL No. C-07-1841 (EMC), 2011 WL 3352460, at *11 (N.D. Cal. Aug. 2, 2011) (awarding $1,000 to class members who were deposed); *Careccio v. BMW of North Am. LLC*, No. 08 Civ. 2619, 2010 WL 1752347, at *7 (D.N.J. April 29, 2010) (awarding $5,000 to class members who were deposed.)

The service payments are intended to compensate the Plaintiffs and certain deponents for services they rendered to the class in generating the settlement funds, risks they bore, and opportunities they sacrificed to ensure a favorable Settlement. Moreover, the payments were agreed to by Defendant, and they are presumptively reasonable because none of the Class Members objected to the service payment. The Court-approved Notice informed Class Members of the $36,000 total in service payment funds to be made to Plaintiffs. Although the Class

Members had the opportunity to object to the payments, none objected. Such silence indicates that the service payment is reasonable. *In re Gen. Motors Corp. Pick-up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 812 (3rd Cir. 1995); *Ross v. A.H. Robins*, 700 F. Supp. 682, 684 (S.D.N.Y. 1998) ("The absence of objectants may itself be taken as evidencing the fairness of the settlement.") (citation omitted); *Bert v. AK Steel Corp.*, No. 1:02-Civ. 467, 2008 WL 4693747, at *3 (S.D. Ohio Oct. 23, 2008). (No objections from the class for a $10,000 service payment favored the award). Thus, the Court should approve the aforementioned service payments for certain Plaintiffs and deposed Class Members in the amounts requested.

III. CONCLUSION.

For the reasons discussed herein and in the declarations submitted herewith and for the reasons set forth in the Motion for Preliminary Approval, the Parties respectfully request this Court to finally approve the Settlement of this litigation as fair, reasonable, and adequate, approve the service awards totaling $25,000 for the named plaintiffs, approve class counsel's petition for attorney fees and advanced costs, and enter final judgment dismissing these actions with prejudice.

Respectfully submitted,

/s/H. Forest Horne, Jr.
H. Forest Horne, Jr., NCSB # 16678
Hoyt G. Tessener, NCSB #16068
G. Christopher Olson, NCSB #21223
MARTIN & JONES, PLLC
410 Glenwood Ave., Suite 200
Raleigh, NC 27603
Phone: (919) 821-0005
Fax: (919) 863-6083
hfh@m-j.com
hgt@m-j.com
gco@m-j.com

ATTORNEYS FOR PLAINTIFFS

/s/D. Christopher Lauderdale
D. Christopher Lauderdale
JACKSON LEWIS P.C.
One Liberty Square
55 Beattie Place
Greenville, SC 29601
Phone: (864) 232-7000
Fax: (864) 235-1381
lauderdc@jacksonlewis.com

L. Dale Owens
JACKSON LEWIS P.C.
1155 Peachtree Street, NE, Suite 1000
Atlanta, GA 30309-3600
Phone: (404) 525-8200
Fax: (404) 525-1173

owensd@jacksonlewis.com

Melissa R. Davis, NCSB #21655
JACKSON LEWIS P.C.
1400 Crescent Green, Suite 215
Cary, NC 27518
Phone: (919) 854-0044
Facsimile: (919) 854-0908
Robin.davis@jacksonlewis.com

ATTORNEYS FOR DEFENDANT

Dated: May 1, 2014

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

KEOSHA HORNE, et al., Plaintiffs, v. SMITHFIELD PACKING COMPANY, INC., Defendant.	)	Civil Action No. 5:09-CV-00042-H
ANGELINA MITCHELL, et al., Plaintiffs, v. SMITHFIELD PACKING COMPANY, INC., Defendant.	)	Civil Action No. 4:08-CV-00182-H
JAMES HARRIS, et al., Plaintiffs, v. SMITHFIELD PACKING COMPANY, INC., Defendant.	)	Civil Action No. 4:09-CV-0041-H

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of May, 2013, I electronically filed the foregoing **MEMORANDUM IN SUPPORT OF JOINT MOTION FOR FINAL APPROVAL OF CLASS AND COLLECTIVE ACTION SETTLEMENT** with the Clerk of Court using the CM/ECF system which will send notification to all counsel of record.

/s/ D. Christopher Lauderdale
D. Christopher Lauderdale

ATTACHMENT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

KEOSHA HORNE, et al., Plaintiffs, v. SMITHFIELD PACKING COMPANY, INC., Defendant.	Civil Action No. 5:09-CV-00042-H
ANGELINA MITCHELL, et al., Plaintiffs, v. SMITHFIELD PACKING COMPANY, INC., Defendant.	Civil Action No. 4:08-CV-00182-H
JAMES HARRIS, et al., Plaintiffs, v. SMITHFIELD PACKING COMPANY, INC., Defendant.	Civil Action No. 4:09-CV-0041-H

DECLARATION OF H. FOREST HORNE IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES, COSTS & EXPENSES TO CLASS COUNSEL

1. I am an attorney in good standing, duly licensed and admitted to the Bar of the State of North Carolina since 1989. I am a shareholder in the law firm of Martin & Jones, PLLC ("Martin & Jones") and Court-appointed class counsel in this action. The testimony set forth in

this Declaration is based on personal knowledge about which I could and would testify competently in open Court if called upon to do so.

TIME SPENT ON THE LITIGATION

2. Martin & Jones has significant experience prosecuting class and collective actions, including wage and hour claims. In October 2013, after over four years of litigation, I, along with Martin & Jones shareholders and Court-appointed class counsel Hoyt Tessener and Christopher Olson negotiated a Settlement of these actions, subject to Court approval, that will make $2,000,000 available to be claimed by qualifying class members in the above-referenced actions who comply with the settlement agreement terms.

3. Class Counsel seeks Court approval of attorney fees and advanced costs in the total amount of $800,000, which Defendant has agreed to pay, over and above the $2,000,000 available to qualifying class members, upon Court approval.

4. The attorney fees sought, which are in the amount of $435,523, on a percentage of the fund basis, are just twenty two percent (22%) of the amount of the Settlement funds available to be claimed by qualifying Class Members. Martin & Jones has also advanced out of pocket litigation expenses in the amount of $364,477 in prosecuting this litigation, which advanced costs were incidental and necessary to the representation of the Class. These advanced costs include, among other things, Court filing fees, expert witness fees, deposition costs, mediation fees, legal research, Notice expenses, travel, and other expenses which are continuing to accrue.

5. It has been class counsel's experience that North Carolina Courts regularly award thirty percent (30%) or more of the settlement amount as attorney fees based upon a percentage of the recovery or attorney fees with lodestar multipliers from two to three times the lodestar for similar cases. Thus, the attorney fees requested here, on either a percentage of the recovery or on

a lodestar basis, are near the bottom of the range typically approved by courts. Also, class counsel is aware that some law firms that represent plaintiffs in employment matters charge their clients one-third of the clients' gross recoveries. Here, class counsel negotiated attorney fees and Defendant agreed to pay attorney fees and expenses over and above the $2,000,000 available to pay settlement shares of qualifying class members. No portion of the available Settlement funds will be applied toward attorney fees, advanced costs, or settlement administration.

6. As of December 5, 2013, Martin & Jones attorneys Forest Horne, Chris Olson and Hoyt Tessener and paralegals Leigh Morauer and Caitlin Griffin had spent more than 1,480 hours during nearly four years spent litigating and settling these actions, which includes more than 1,073 attorney hours and over 407 paralegal hours. Class counsel's total lodestar on these cases as of December 5, 2013 was well over $590,000. Submitted as Exhibit A is a summary of just some of the time spent by some Martin & Jones attorneys and paralegals as of the date of this filing; however, substantial work on settlement administration is ongoing and will be performed in the future. The vast majority of time entries were made contemporaneously but, the time was reviewed by the attorney or paralegal for accuracy and completeness. Entries inadvertently included or omitted were corrected to the best of class counsel's knowledge, information and belief, and some time entries were reduced for inexperience, inefficiency or errors.

7. Under the terms of the Settlement, Defendant agreed, upon Court approval, to pay class counsel not more than $800,000 in both attorney fees and advanced litigation expenses.

8. The requested attorney fees are not based solely on time and effort already expended; they are also meant to compensate class counsel for time class counsel will be required to spend administering the Settlement in the future. In class counsel's experience,

administering class settlements involving thousands of Class Members and millions of dollars requires a substantial and ongoing commitment. For example, many Class Members have called class counsel and continue to call with questions about the Settlement and timing of payments, as well as with changes to their contact information.

MARTIN & JONES, PLLC

9. Martin & Jones, PLLC was founded in 1982. The firm has concentrated on representing people individually, as well as in class actions, for both economic and bodily injury. Martin & Jones has handled a variety of employment litigation matters. Virtually all legal matters the firm handles are on a contingent attorney fee basis.

10. Martin & Jones handled this case without prepayment of any attorney fees or costs by the Plaintiffs. For approximately four years now, Martin & Jones has advanced all of the litigation expenses (now approximately $364,477) and covered all overhead associated with payroll for all attorneys and staff members working on the case.

11. The firm also handles contingent fee multi-district litigation ("MDL") cases. Currently, the firm has MDL cases pending before the U.S. District Court in the Southern District of West Virginia, the U.S. District Court in the Southern District of Illinois, and U.S. District Court in the Northern District of Ohio.

12. Martin & Jones is presently comprised of thirteen attorneys, including five shareholders and eight associates. Martin & Jones employs approximately forty support staff, including about thirteen paralegals. Martin & Jones paralegals have excellent qualifications. Martin & Jones paralegals range in legal experience from between 2 and 30 years.

13. I graduated from Campbell University School of Law and earned my Juris Doctor in May 1989. I received a Bachelor of Arts from the University of Kentucky in 1982. I have

Case 4:09-cv-00041-HLM Document 175-12 Filed 05/01/13 Page 5 of 13

been continuously licensed to practice law in the state of North Carolina since 1989 and in the state of Georgia since 2006. I have approximately 25 years of legal practice experience. I am admitted to practice in all North Carolina state courts and federal court in the Eastern District of North Carolina since 1989, and was subsequently admitted to practice in the Middle and Western Districts of North Carolina. I have appeared in Court in all North Carolina Federal District Courts, and have argued appeals before the United States Fourth and Sixth Circuit Courts of Appeal and the North Carolina Court of Appeals.

14. I began my legal career as an associate and later as a partner with Manning, Fulton & Skinner, P.A., located in Raleigh, North Carolina. In January 1997, I joined Martin & Jones as an associate and became a shareholder in 2001. I have been recognized by my peers as **a Best Lawyer in America** every year since 2008. I have also been chosen for inclusion in **North Carolina Super Lawyers** every year since 2010. I have maintained the highest attorney rating, **"AV", by Martindale-Hubbell**, for over fifteen years. I was peer selected for inclusion into The Litigation Counsel of America.

15. I have worked on class actions since approximately 2001. I was Court-appointed class counsel representing the plaintiffs in *McLaurin, et al. v. Prestage Foods, Inc.*, 271 F.R.D 465 (E.D.N.C. 2010); *Romero v. Mountaire Farms, Inc.*, 7:09-CV00190-BO; *Horne, et al. v. Smithfield Packing Co.*, No. 5:09-CV-00042-H(1), 2011 WL 4443034 (E.D.N.C. Sept. 23, 2011); *Harris, et al. v. Smithfield Packing Co.*, No. 4:09-CV-00041-H(1), 2011 WL 4443024 (E.D.N.C. Sept. 23, 2011); *Mitchell, et al. v. Smithfield Packing Co.*, No. 4:08-CV-00182-H(1), 2011 WL 4442973 (E.D.N.C. Sept. 23, 2011); and *Rindfleisch, et al. v. Gentiva Health Servs., Inc.*, No. 1:10-CV-03288, Dkt. 167 (N.D. Ga. April 13, 2011).

16. In addition to these cases, I have been involved in numerous other complex litigation matters filed in state and federal courts. I have tried multiple cases to jury verdict in North Carolina, South Carolina, and Texas, and have been involved in numerous arbitrations that were tried to a panel decision.

17. **HOYT G. TESSENER, SHAREHOLDER.** Martin & Jones shareholder Hoyt Tessener is a 1988 graduate of Campbell University School of Law and has been licensed to practice law in North Carolina since that time. After law school, Mr. Tessener worked for Womble Carlyle. He joined Martin & Jones in 1993. Mr. Tessener has tried cases to verdict in all North Carolina federal courts and numerous counties throughout North Carolina. He has 26 years of legal experience and 20 years of class action legal experience. In addition, he is the past chairman of the North Carolina Bar Association's Litigation Section and the North Carolina Advocates for Justice's Auto Tort Section. He also served on the Board of Governors of the North Carolina Advocates for Justice. Mr. Tessener has been selected repeatedly by his peers for inclusion as a Super Lawyer and in Business North Carolina's Legal Elite. He has also been recognized as a Best Lawyer in America and as a Top 100 Trial Lawyer in North Carolina.

18. **G. CHRISTOPHER OLSON, SHAREHOLDER.** Martin & Jones shareholder Christopher Olson is a 1994 *magna cum laude* graduate of Campbell University School of Law and has been licensed to practice law in North Carolina since 1994. After law school, Mr. Olson served as a law clerk to the Honorable Franklin T. Dupree, Jr. in the United States District Court for the Eastern District of North Carolina. Thereafter, Mr. Olson worked for 5 years at Womble Carlyle before joining Martin & Jones in 2001 and he became a shareholder in 2008. Mr. Olson has approximately 20 years of legal experience and 11 years of class action legal experience. Mr. Olson was co-lead counsel in the *Tillman v. Commercial Credit Loans, Inc.*, 362 N.C. 93,

Case 5:09-cv-00042-D Document 225 Filed 05/01/13 Page 7 of 13

655 S.E.2d 362 (2008) case (The *Tillman v. CitiFinancial Services, Inc.* case was settled for $42.5 million. Through the settlement of the *Tillman* case, some 10,000 North Carolina borrowers received settlement payments. The case was litigated throughout the state and federal courts of North Carolina and resulted in a landmark ruling by the North Carolina Supreme Court in 2008. The North Carolina Supreme Court held that the arbitration clause included in borrowers' loan documents was unenforceable based upon unconscionability. The decision represented the first time an appellate court in the State had struck down an arbitration clause as unenforceable due to unconscionability.), Mr. Olson also served as class counsel in *Richardson v. Bank of America*, 182 N.C. App. 531, 643 S.E.2d 410 (2007) and its companion case, *Williams v. EquiCredit Corp. of N.C.*, No. 02-CVS-4972 (N.C. Superior Court, Durham Cnty., Feb. 20, 2009). (In *Richardson v. Bank of America* and the companion case of *Williams v. EquiCredit Corporation of N.C.*, more than 800 North Carolina subprime borrowers received significant settlement payments. Class members recovered, on average, more than $31,500 each. The *Richardson* case was argued at the North Carolina Court of Appeals and the North Carolina Supreme Court. The Court of Appeals affirmed trial court rulings that the bank violated the North Carolina Unfair and Deceptive Trade Practices Act and committed a breach of the duty of good faith and fair dealing in selling credit insurance products that had not been approved by the Department of Insurance. The North Carolina Supreme Court heard arguments in the case and then decided that review had been improvidently granted, meaning that the Court of Appeals decision remained the law of the case and binding precedent.). Mr. Olson also assisted with: *McLaurin, et al. v. Prestage Foods, Inc.*, 271 F.R.D 465 (E.D.N.C. 2010); *Romero v. Mountaire Farms, Inc.*, 7:09-CV-00190-BO; *Horne, et al. v. Smithfield Packing Co.*, No. 5:09-CV-00042-H(1), 2011 WL 4443034 (E.D.N.C. Sept. 23, 2011); *Harris, et al. v. Smithfield Packing Co.*, No.

4:09-CV-00041-H(1), 2011 WL 4443024 (E.D.N.C. Sept. 23, 2011); *Mitchell, et al. v. Smithfield Packing Co.*, No. 4:08-CV-00182-H(1), 2011 WL 4442973 (E.D.N.C. Sept. 23, 2011); and *Rindfleisch, et al. v. Gentiva Health Servs., Inc.*, No. 1:10-CV-03288, Dkt. 167 (N.D. Ga. April 13, 2011).

19. **LEIGH MORAUER, NCCP.** Leigh Morauer has worked for Martin & Jones as a paralegal since September 2011. Ms. Morauer graduated from Mars Hill College in May 2011 with a Bachelor of Arts in Religion and Philosophy and a minor in Criminal Justice. Ms. Morauer entered the Meredith College Paralegal Program, specialized in Civil Litigation, and graduated with a paralegal certificate in May 2012. Ms. Morauer obtained her North Carolina State Bar Certified Paralegal ("NCCP") credential in June 2013.

20. **CAITLIN GRIFFIN, NCCP.** Caitlin Griffin has worked for Martin & Jones as a bilingual paralegal since April 2012. Ms. Griffin graduated as a Presidential Scholar from Meredith College in May 2011 with a Bachelor of Arts in Psychology and Spanish. Ms. Griffin then entered the Meredith College Paralegal Program, specialized in Civil Litigation, and graduated with a paralegal certificate in May 2012. Ms. Griffin obtained her North Carolina State Bar Certified Paralegal ("NCCP") credential in December 2012.

BILLING RATES

21. The current hourly billing rates for shareholders, associates and paralegals in this firm are based on legal experience and knowledge, and are fair and reasonable based on counsel's knowledge of hourly rates approved by Courts in the Eastern District of North Carolina and other North Carolina District Courts, and are as follows:

a. Shareholder H. Forest Horne, Jr. – $450.00

b. Shareholder Hoyt G. Tessener – $450.00

c. Shareholder G. Christopher Olson – $400.00

d. Paralegals – $125.00

TIME RECORDS

22. Attached to this Declaration are billing time sheets reflecting time spent on this case by attorneys Horne, Olson and Tessener and paralegals Morauer and Giffin during the course of this litigation. (Exhibit A.) The vast majority of the billing entries were made contemporaneously. However, as lead class counsel, I reviewed the time entries of staff and exercised billing judgment to correct inadvertently entered or omitted time entries, so that the time entries conservatively, fairly and accurately reflect the work performed by attorneys and paralegals working on the case, to the best of my knowledge, information and belief. No time is submitted for attorneys no longer with the firm, for administrative staff and legal interns who worked on this case.

23. Advanced costs and a summary thereof, are documented as Exhibit B. These costs were reasonably and necessarily incurred by class counsel and were necessary in order to pursue this claim and while the advanced costs exceed $364,477, class counsel is limiting its request for Court approval of both attorney fees and advanced costs to be paid by Defendant to $800,000 per the agreement with Defense counsel.

24. The firm regularly works on a contingent fee basis and advances litigation costs in FLSA and other litigation, along with paying all overhead (including attorney and staff salaries, filing fees, expert witness costs, deposition costs, travel and other case expenses) necessary to carry a litigation case through to conclusion.

RISKS OF LITIGATION

25. Class counsel undertook to prosecute these actions without any assurance of payment for their advanced costs or their legal services, litigating the case on a wholly contingent attorney fee basis in the face of tremendous risk. Large-scale wage and hour cases of this type are, by their very nature, complicated and time-consuming. Lawyers undertaking representation of large numbers of affected employees in wage and hour actions inevitably must be prepared to make a tremendous investment of time, energy, and resources. Due also to the contingent nature of the customary fee arrangement, lawyers are asked to be prepared to make this investment with the very real possibility of an unsuccessful outcome and no attorney fee of any kind and the loss of hundreds of thousands of dollars in expenses. Class counsel risked all its time and substantial expenses and stood to gain nothing in the event the case was unsuccessful. By handling contingency work only, class counsel foregoes the opportunity to bill hourly work. Thus, when class counsel spends time on contingency matters, they do so at significant opportunity cost for the firm. Indeed, class counsel turns away hourly matters, including hourly litigation matters, in order to enable its attorneys to work on contingency matters, including class actions. To date, class counsel has worked on this case for nearly four years without compensation of any kind, and further advancing over $364,477 in advanced costs, and the requested attorney fee has been wholly contingent upon the result achieved.

26. The facts and circumstances of these cases presented numerous substantial hurdles to a successful recovery. Defendant argued that the Plaintiffs were compensated for all their work, that the donning and doffing time was *de minimis*, that Defendant had a policy whereby employees could put on and take off almost all clothing and equipment before coming to work or after leaving work and that there were no accurate records of the hours worked, that

the case was not properly brought as a class and collective action, and that the Plaintiffs were not similarly situated, etc., as well as many other novel defenses. Plaintiffs faced the very real risk in this case that they would not receive any award for damages. Additionally, Plaintiffs faced the risk that Defendant would prevail on a good faith defense avoiding or reducing liquidated damages.

HISTORY OF LITIGATION OF THE CLASS CLAIMS

27. At the time the Parties agreed to a Settlement, class counsel had completed substantial discovery, including depositions of Plaintiffs, and depositions of defense corporate or 30(b)(6) witnesses and expert witnesses for both the Plaintiffs and Defendant. Plaintiffs retained an industrial engineer who made multiple plant visits to plan and later perform industrial engineering studies, and Plaintiffs' economist and statistician calculated damages based on times, representative evidence, and wage rates.

28. The settlement was reached only after class counsel: (a) conducted an extensive investigation into the underlying facts of the case, including the allegations set forth in the Complaints; (b) thoroughly researched the law applicable to the Class Members' claims and the Defendant's defenses; (c) conducted extensive class and merits discovery, including taking 30(b)(6) depositions and defending Plaintiffs' depositions; (d) retained expert witnesses who prepared expert reports on both liability and damages, defended their depositions and deposed Defendant's industrial engineer; (e) briefed numerous motions on the substantive and procedural law; (f) reviewed and analyzed thousands of pages of documents and voluminous electronic data produced by Defendant; (h) successfully certified the classes over Defendant's strong opposition; (i) obtained favorable decisions from the Court on the applicability of the FLSA and state law to the classes; (j) participated in a mediation followed by weeks of active negotiations; (k)

consulted with expert witnesses to fully evaluate the strength of Plaintiffs' claims and damages; and (l) began briefing multiple summary judgment issues.

SETTLEMENT NEGOTIATIONS

29. Based on their experience and expertise, class counsel has determined that the Settlement is in the Class's best interest after weighing the substantial benefits of the Settlement against the numerous obstacles to a better recovery after continued litigation. Class counsel discussed the proposed settlement with all class representatives and 4 of the 5 class representatives were in favor of settlement.

30. The Parties drafted the final Settlement Agreement, with attached notice and claims forms and various other documents.

EFFORTS OF CLASS REPRESENTATIVES

31. Class Representatives are employees or former employees of Defendant: Angelina Mitchell, Jerraine Cannon, James Harris, Keosha Horne, and Nettie Tyson. Each of the Class representatives was integral to bring and settling this class action and made significant contributions to this case, including meeting with and speaking to class counsel about filing the case, preparing for and giving depositions, answering discovery and discussing the status of the case and settlement of the case.

32. Although trial was unnecessary, the Class representatives were prepared to testify at trial.

I declare under penalty of perjury under the laws of the State of North Carolina that the foregoing is true and correct to the best of my knowledge and that this Declaration was prepared in the State of North Carolina on the 9th day of December, 2013.

H. Forest Horne